

Appl. No. 10/603,008
Amdt. Dated February 27, 2006
Reply to Office Action of December 7, 2005

• • R E M A R K S / A R G U M E N T S • •

The Official Action of December 7, 2005 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment the title of the invention has been changed by adapting the title that was courteously suggested by the Examiner on page 2 of the Office Action.

Also by the present amendment independent claim 1 has been changed to that:

1) The first and second stretchable zones are bifurcated at a transverse middle of the crotch region so as to extend in two laterally separated portions to the opposite lateral zones of the front and rear waist regions;

2) The third stretchable zones defined by zones other than the first and second stretchable zones, including portions that extend between the two laterally separated portions of each of the first stretchable zone and the second stretchable zone and along lateral side portions of at least the crotch region; and

3) The first and second stretchable zones have substantially uniform tensile stresses.

Support for these limitations can be readily found in Figs. 1 and 7 in which the first and second stretchable zones define a substantially X-shape as shown and mentioned on page 11, line 15 of applicants' specification. Moreover, support can be found in the description of the tensile stresses

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on page 16 of applicants' specification and in the structural description of the zone being made uniformly from fabric layers m1, m2 and m3.

The term "stretch stress" has been changed to "tensile stress" in view of the Ciullo et al. reference cited by the Examiner (*The Rubber Formulary*, Noyes Publications, Norwich, New York). "Tensile stress" seems to be more appropriate than "stretch stress."

Other changes to the claims have been made in response to the Examiner's comments on pages 2-3 of the Office Action and otherwise address and correct matters of form.

Entry of the changes to the title of the invention and to the claims is respectfully requested.

On page 2 of the Office Action the Examiner requested applicants to change the title of the invention to a more descriptive title. Moreover, the Examiner has courteously suggested a new title.

In response to the Examiner's request, applicants have adapted the Examiner's suggested new title for the invention.

On pages 2-3 the Examiner has objected to claims 1, 7 and 9 because of several informalities.

In response to the Examiner's objection, the claims have been amended in a manner which is believed to be commensurate with the Examiner's suggested changes.

Claims 1-9 are pending in this application.

Claims 1, 2, 6, 7 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,120,485 to Gustafsson et al.

Claims 3 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gustafsson et al.

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Claims 1, 2 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,179,820 to Fernfors.

Claims 3 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fernfors.

On page 9 of the Office Action the Examiner has objected to claims 4 and 5 as being dependent upon a rejected claim, but has otherwise indicated that claims 4 and 4 would be allowable if rewritten in independent form including all the limitations of the base claims and any intervening claims.

For the reasons set forth below, it is submitted that all of the pending claims are allowable over the prior art of record and therefore, each of the outstanding prior art rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Gustafsson et al. as disclosing:

...an absorbent article having a front waist region, rear waist region, crotch region, first, second, and third stretchable zones, a first engaging means, and a first receiving means; the first and second stretchable zones are bifurcated at a transverse middle of the crotch region so as to extend into opposite lateral zones for the front and rear waist regions, respectively, and the first engaging and receiving means substantially connect the front and rear waist regions in opposite lateral zones (Figures, column 2, lines 1-45).

The Examiner has further relied upon Gustafsson et al. as disclosing that:

...the elastic material of the elastic pant comprises an elastic nonwoven fabric material (column 2, lines 1-7) and that the elastic pant is held snug in place against the body of the user but do not expressly disclose that the first and second stretchable zones having a higher stretch stress than the third stretchable zone.

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The Examiner takes the position that:

When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, bifurcated stretchable zones and a third stretchable zone extending into lateral zones of the front and rear waist regions) except for a property or function (in the present case, the first and second zones having a higher stretch stress than the third stretchable zone) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

The Examiner has relied upon Fernfors as disclosing:

...an absorbent article having a front waist region, rear waist region, crotch region, first, second, and third stretchable zones, a first engaging means, and a first receiving means; the first and second stretchable zones are bifurcated at a transverse middle of the crotch region so as to extend into opposite lateral zones for the front and rear waist regions, respectively, and the first engaging and receiving means substantially connect the front and rear waist regions in opposite lateral zones (Figures, column 2, lines 42-column 5, line 33; column 7, line 49-column 9, line 67).

The Examiner states that:

Fernfors further discloses that the elastic elements may be attached at different tensions and that the article is to fit comfortably yet tight enough to prevent leakage (column 2, lines 50-59, column 10, lines 5-13) but do not expressly disclose that the first and second stretchable zones having a higher stretch stress than the third stretchable zone.

The Examiner takes the position that:

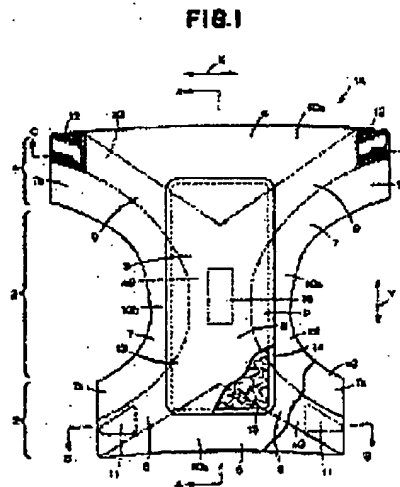
When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or

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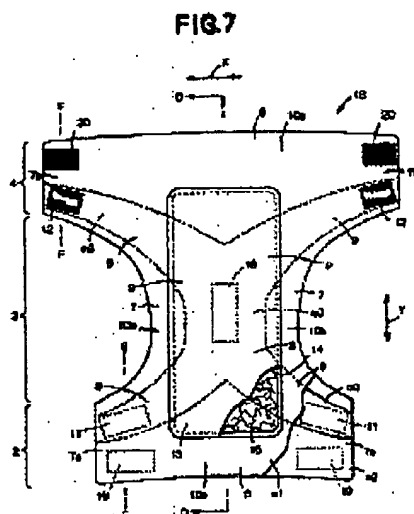
obviousness has been established when the reference discloses all the limitations of a claim (in this case, bifurcated stretchable zones and a third stretchable zone extending into lateral zones of the front and rear waist regions) except for a property or function (in the present case, the first and second zones having a higher stretch stress than the third stretchable zone) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

Applicants' Figs. 1 and 7 are presented as follows:



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Gustafsson et al's Figs. 1 and 2 are presented as follows:

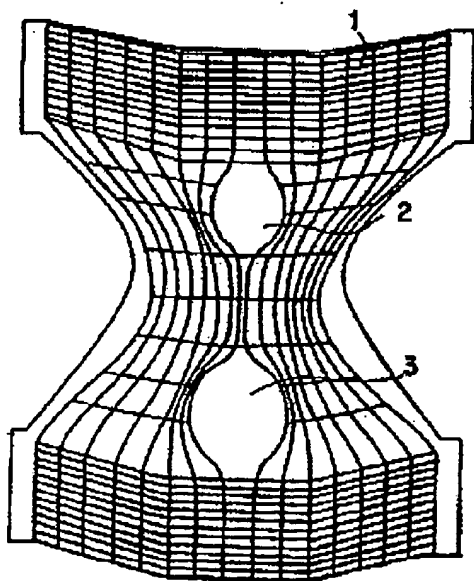


FIG. 1

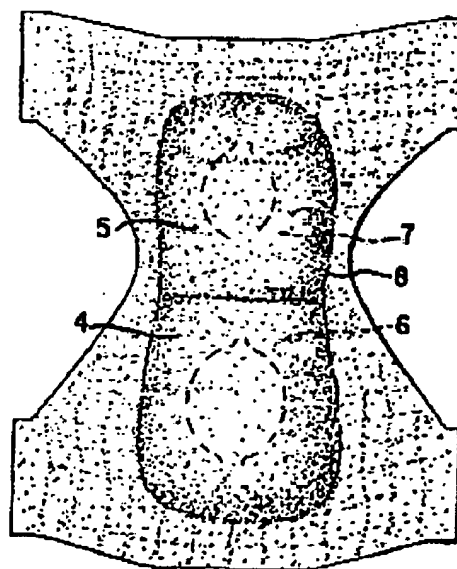


FIG. 2

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Fernfors' Fig. 1 is presented as follows:

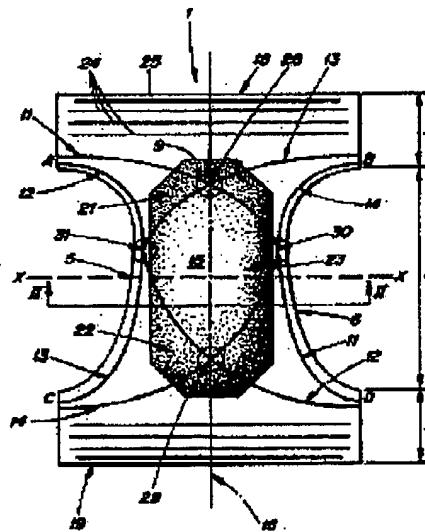


FIG. 1

The Examiner has not identified the structure of any of the first, second and third stretchable zones in either Gustafsson et al. and Fernfors.

Such zones are clearly identified in applicants' figures by reference numerals 1 (first stretchable one), 9 (second stretchable zone) and 5, 6 and 7 (third stretchable zones), and recited in applicants' pending claims.

With regard to Gustafsson et al. there do not appear to be first, second and third stretchable zones which read on the structure of applicants' claimed zones which require that the first and second stretchable zones be bifurcated at a transverse middle of the crotch region so as to extend in two laterally separated portions to the opposite lateral zones of the front and rear waist regions.

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With regard to Fernfors, any stretchable zones would have to be provided by the elastic elements 10 and 24. However, the use of such elastic elements precludes the formation of stretchable zones that are structurally similar to applicants' claimed invention and have "substantially uniform tensile stresses."

In fact, Fernfors specifically requires that the elastic members form different paths and teaches that:

...the four different paths 11, 12, 13, 14 enclose a region 15 positioned in the article's crotch region 4, which region 15 basically has the form of a rhombus with convex curved sides and which is determined by the four points 28, 30, 29, 31.

Such as convex rhombus structure excludes a central ("first") stretchable zone that has a substantially uniform tensile stress.

Moreover it is noted that Fernfors teaches:

The basic idea of the invention is, by means of a suitable distribution of elastic forces over the surface of the article, both to create a bowl-formed container in the receiving zone, for collection of fluid and faeces, as well as to create contracting forces around the contours of the leg edge-openings in order to give a good seal against the user's legs. In accordance with the invention it is possible to make use of elastic forces also in the absorbent article's receiving zone so that, in a controlled manner, bowl-like structures for collection of urine and faeces are created.

It can thus be appreciated that the goal of Fernfors is completely different from that of the present invention.

And as a result, the present invention is structurally as well as functionally distinguishable over Fernfors.

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Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover, the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

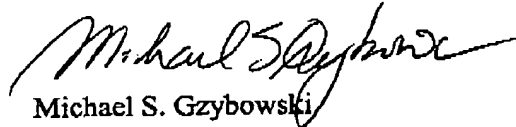
The prior art made of record by the Examiner on page 9 of the Office Action, but not relied upon has been noted and is not deemed to be particularly pertinent to applicants' claimed invention.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

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To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110

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